U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: ATHENS Date: JAN 29 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii), filed in conjunction with Application for Waiver of Grounds of Inadmissibility under Section 212 of the Act, 8 U.S.C. 1182.

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The dual Form I-601 and Form I-212 applications were denied by the Officer in Charge, Athens, Greece, with emphasis on the Form I-601 application. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal of that decision will be rejected, the decision will be withdrawn and the matter will be remanded for further action.

The applicant is a native and citizen of Egypt who was found to be inadmissible to the United States by a consular officer under sections 212(a)(9)(B)(ii) and section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(ii) and § 1182(a)(9)(A)(ii), for having been unlawfully present in the United States for an aggregate period of one year or more and for having been removed from the United States.

The applicant was present in the United States on August 2, 1996, without a lawful admission or parole. He married his first wife on March 10, 1997, and that marriage was terminated in June 2000. The applicant married his present wife on January 17, 2001. He was arrested by Service officers on June 17, 2001 and removed at government expense on August 16, 2001. The applicant is the beneficiary of an approved Petition for Alien Relative. He applicant seeks permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), and a waiver of the ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to rejoin his spouse in the United States.

The officer in charge discussed the requirements for a waiver under sections 212(a)(9)(B)(v) and 212(a)(9)(A)(iii) of the concluded that the applicant failed to establish the presence of extreme hardship and determined that a favorable decision is not merited. The officer in charge then denied both applications accordingly.

On appeal, the applicant's wife states that being separated from her husband imposes extreme hardship upon her emotionally. The applicant's wife discusses financial hardship she has undergone by losing the house they shared and her car. She states that she and her daughter have moved in with her parents. The applicant's wife states that she and her daughter are now in Egypt and although they are doing better emotionally, she discovered that she is pregnant and this will cause them extreme hardship in Egypt.

Section 212(a)(9)(A) of the Act provides, in part, that:

> (i) Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years

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in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(i) Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States, whether or not pursuant to section 244(e), prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure from the United States, is inadmissible.

(v) The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(a)(9) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and became effective on April 1, 1997. For the purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.

Service instructions at O.I. 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of

inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) should be rejected, and the fee refunded.

The present record reflects that the Form I-601 was adjudicated first and denied based on the absence of a finding of extreme hardship. The Form I-601 application cannot be adjudicated unless the Form I-212 application is approved.

Therefore, since the Form I-212 application was not adjudicated first and approved in this instance, the appeal of the officer in charge's decision denying the Form I-601 application will be rejected, and the record remanded so that the officer in charge may adjudicate the Form I-212 application first.

If the officer in charge approves the Form I-212 application or provides evidence that such application has been approved, he shall certify the record of proceeding to the Associate Commissioner for review and consideration of the appeal regarding the Form I-601 application. However, if he denies the Form I-212 application or provides evidence that such application has been denied, he shall certify that decision to the Associate Commissioner for review, reject the Form I-601 application, and refund the fee.

ORDER: The appeal is rejected. The decision of the officer in charge is withdrawn. The matter is remanded for further action consistent with the foregoing discussion.